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Texas Federal Court Upholds Professional Services Exclusion to Preclude Duty to Defend

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In *Project Surveillance, Inc. v. The Travelers Indemnity Company*, No. 4:19-CV-03324, 2020 WL 292247 (S.D. Tex. Jan. 21, 2020), a Texas federal court held that a professional services exclusion in a commercial general liability policy precluded Travelers' duty to defend its insured.

The underlying lawsuit was a wrongful death action brought by the family of a worker killed on a construction site. Project Surveillance was present at the construction site "to provide safety supervision or other services." The underlying lawsuit alleged that Project Surveillance negligently failed to inspect or adequately inspect the project and failed to warn or adequately warn the decedent of a dangerous condition. The underlying lawsuit also alleged that Project Surveillance was negligent in failing to stop work.

At the time of the incident, Project Surveillance had commercial general liability insurance through Travelers and professional liability insurance through RLI. RLI agreed to defend Project Surveillance in the underlying lawsuit. Travelers, however, denied owing a duty to defend or indemnify based on an exclusion for "bodily injury" arising out of the rendering or failure to render any "professional service." The Traveler policy defined the term "professional services" to mean any service requiring specialized skill or training, including "failure to prepare [. . .] any warning," "supervision," "inspection," "control," "surveying activity or service," "job site safety," "construction administration," and "monitoring [. . .] necessary to perform and of [those] services."

Project Surveillance did not contest that safety supervision is a "professional service." Rather, Project Surveillance argued that the vague allegation that it provided "other services" precludes application of the exclusion. More specifically, Project Surveillance argued that it is impossible to determine whether the underlying lawsuit relates to "professional services" or "other services" it rendered, meaning there is at least a potential for coverage.

The court disagreed with Project Surveillance. The court recognized that the underlying lawsuit plead six specific allegations of negligence against Project Surveillance, all of which arose out of the provision of, or failure to provide, a "professional service." The allegations described failures "to inspect [. . .] the project," "to warn [. . .]," "to assure [. . .] [safety]," "to verify [. . .]," "to report or require [. . .]," and "to stop work when adequate [. . .]." The court found that the professional services exclusion "clearly brings each allegation within the scope of the policy's professional services exclusion.

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